IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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S.B. CIVIL WRIT PETITION NO.2829/2005

State of Rajasthan

Versus

Hans Raj and Anr.

Date of Order : 18.7.2005

PRESENT

HON'BLE MR. JUSTICE R.P.VYAS

Ms.V.Bora, Assistant Govt. Advocate, for the petitioner/s

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The instant petition is directed against the judgment and award dtd. 28.7.1999 (Annex.3) passed by the learned Labour Court, Udaipur in Labour Case No.26/1994 and it may be declared that the respondent No.1 is not entitled for any relief of compensation as awarded vide impugned award dated 28.7.99.

The brief facts of the case are that an industrial dispute was raised by the non-petitioner Hans Raj before the Conciliation Officer regarding his retrenchment. The conciliation proceedings failed and a failure report was submitted by the conciliation officer before the appropriate

Government. The appropriate Government vide notification dated 13.4.1994 referred the matter to the Labour Court, Udaipur for adjudication under the provisions of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act of 1947).

The learned Labour Court, Udaipur issued notices to the parties and the respondent No.1 – claimant filed claim petition stating inter alia that he was working as daily rated employee – casual labour under the respondent and his services were satisfactorily. On 27.1.1992 his services were retrenched by the respondent. According to the claimant-respondent No.1 he already worked under the respondent for 240 days in a calender year but his services were retrenched without any notice or compensation as provided under Section 25-F of the Act of 1947.

The petitioner filed reply to the claim petition in which it was stated that the respondent No.1 – workman was not appointed on or against any sanctioned post. He was simply engaged as daily wage casual labour. In the reply, it was further alleged that the respondent No.1 has not completed 240 days in a calendar year and the services of the respondent No.1 was not retrenched by

the petitioner, he left the job at his own accord. From these point of view, he was not entitled for the relief as has been claimed by him in the claim petition.

That during the course of proceedings, the petitioner – Department as well as the respondent – workman led their oral as well as documentary evidence before the learned Labour Court and the learned Labour Court after considering the evidence and arguments raised by the parties, partly allowed the claim petition vide judgtment and award dated 28.7.99 holding that the retrenchment of the respondent – workman was unjustified. However, in place of reinstatement the learned Labour Court directed payment of compensation to the tune of Rs.20,000/-. Hence, the present writ petition with the above-mentioned prayer.

Heard the learned counsel for the petitioner at admission stage.

The main contention raised by the learned counsel for the petitioner is that the learned Labour Court has not properly appreciate the evidence available on record. The learned Labour Court has failed to consider the fact

that the respondent No.1 was not appointed against any sanctioned post. Therefore, the findings recorded by the learned Labour Court regarding retrenchment of the respondent – workman are erroneous and same are liable to be quashed and set-aside.

In my opinion the findings recorded by the learned Labour Court are based on correct appreciation of evidence available on record.

From the evidence on record it is established that the respondent – workman has completed 270 days in a calendar year preceding the date of his retrenchment. The petitioner has also proved the fact that the respondent – workman has abandoned the services. Even before terminating the services of the respondent – workman one month's notice or salary in lieu thereof has not been given to the respondent – workman and hence, there is flagrant violation of the provisions of Section 25(F) of the Industrial Disputes Act, 1947.

Thus, the findings of facts recorded by the Labour Court are based on correct appreciation of entire evidence and material available on record and it cannot be said that

the findings of the Labour Court, Udaipur are erroneous or perverse or patently unreasonable or based on no material or evidence. It also cannot be said that the Labour Court committed any illegality in holding the termination of the services of the respondent - workman as illegal. The findings of facts recorded by the Labour Court do not suffer from any basic illegality or infirmity. That apart the learned Labour Court has directed payment of compensation instead of reinstatement.

The Hon'ble Supreme Court in the case of Manager, RBI, Bangalore V/s S.Mani & Ors. reported in (2005) 5 Supreme Court Cases 100 has held that it is discretion of the Labour Court to grant the relief depending on the facts and circumstances of each case. Similar view has been taken by this Court in the case of Allahabad Jal Sansthan Vs. Daya Shankar Rai and Anr. reported in (2005) 5 Supreme Court Cases 124. It is settled preposition of law that discretion exercised by the lower courts should not be interfered with by this Court while exercising powers under Article 227 of the Constitution of India, unless the same is arbitrary and unreasonable. In the present case the learned Labour Court while allowing the claim petition has directed payment of compensation in place of

reinstatement considering the facts and circumstances of the present case, which appears to be plausible.

Apart from that, under Article 227 of the Constitution of India, the High Court cannot interfere with the exercise of a discretionary power vested in the inferior Court or Tribunal, unless its findings or order is clearly perverse or patently unreasonable. While exercising the powers under Article 227 of the Constitution of India, the High Court does not act as Court of appeal and for this reason also, no interference is called for in the impugned judgment and award passed by the learned Labour Court.

. For the reasons mentioned above, the instant petition is dismissed. No order as to costs.

(R.P. VYAS)J.

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